IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 5TH NOVEMBER 2007 / 14TH KARTHIKA 1929

WP(C).No. 32633 of 2007(I)

OS.523/2006 of I ADDL.SUB COURT,ERNAKULAM
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PETITIONER:

SALIL GUPTA, AGED 42 YEARS,
S/O ESWAR CHANDRA GUPTA,
D 12A, CHACKOLAS HABITATE, THEVARA P.O.,
ERNAKULAM VILLAGE, KANAYANNOOR TALUK,
ERNAKULAM.

BY ADV. SRI.V.M.KURIAN
SRI.MATHEW B. KURIAN
SRI.K.T.THOMAS

RESPONDENTS:
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1. **MRS. MARY, AGED 59 YEARS,**
   W/O ANTONY JAMES, HOUSEWIFE, NOW RESIDING AT
   EDANILATHU HOUSE, MARADU DESOM, MARADU VILLAGE,
   KANAYANNOOR TALUK, ERNAKULAM DISTRICT.

2. **SMT. PHILOMINA, AGED 57 YEARS,**
   WIFE OF AUGUSTINE, RETIRED TEACHER,
   RESIDING AT CHIRAMEPPARAMBIL HOUSE,
   MULAVUKADU DESOM, MULAVUKADU VILLAGE,
   KANAYANNOOR TALUK, ERNAKULAM.

3. **SMT. REJINA PETER, AGED 54 YEARS,**
   W/O PETER, HOUSEWIFE, RESIDING AT KALARICKAL
   HOUSE, OCHAMTHURUTHU, VYPIN, ERNAKULAM.

4. **SMT. SHERLY SEBASTAIN, AGED 49 YEARS,**
   HOUSEWIFE, RESIDING AT VARIYATH HOUSE,
   CHERANELLOOR, KANAYANNOOR TALUK,
   ERNAKULAM.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 05/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J

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W.P.(C) No.32633 OF 2007

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Dated this the 5th day of November 2007

JUDGMENT

This writ petition is filed against the rejection of the plaint under Order VII Rule 11(a) of the Code of Civil Procedure. Ordinarily when a plaint is rejected under Order VII Rule 11(a), it is an appealable decree and unless there are grievous mistakes which goes to the root of the matter the inherent powers of the court under Article 227 of the Constitution shall not be exercised. But, I feel this is a classical case where this court has to interfere.

2. The suit is one for specific performance of the contract and along with the suit, the plaintiff filed an application for injunction. Notice was ordered in the said case. Defendants entered appearance and submitted a counter agreeing to execute the sale deed, if the plaintiff pays the balance consideration within 7 days. On the basis of that averment, the court finds that there is no cause of action for the plaintiff to institute the suit and rejects the plaint under Order VII Rule 11(a) C.P.C. I am afraid that the learned Sub Judge has not properly understood the scope of rejection

under Order VII Rule 11(a) C.P.C. The Apex Court has held in very many decisions that it is the pleadings in the plaint that has to be taken note of while considering rejection under Order VII Rule 11(a) C.P.C. I am aware in cases even if the written statement is not filed the court can reject the plaint for valid reasons. The rejection is done only on the basis of a factor that defendants in an injunction application agreed to execute the sale deed on deposit of consideration. I think they are subsequent developments which cannot be looked into for rejecting the suit and hold that there is no cause of action.

3. Therefore I exercise my supervisory jurisdiction under Article 227 of the Constitution of India and set aside the judgment and decree passed by the court below and direct it to restore the suit back to file and proceed in accordance with law, as there is absolutely no ground to reject the plaint under Order VII rule 11(a) C.P.C.

Writ petition is disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-